IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

Crl.MC.No. 686 of 2003()

CRIME NO. 327/02 OF NALLALAM POLICE STATION, KOZHIKODE

PETITIONER: ACCUSED:

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1. K.V. THANKAMANI, D/O. KURUPPAMVEETTIL
   APPU, KULANGARA PARAMBATH HOUSE,
   P.O. GURUVAYOORAPPAN COLLEGE, KOZHIKODE.

2. K.V. VISHALAKSHI, D/O. KURUPPAMVEETTIL
   APPU, OLAVANNA, KOZHIKODE.

3. RAJAN, KULANGARA PARAMBATH HOUSE,
   P.O. GURUVAYOORAPPAN COLLEGE,
   KOZHIKODE.

4. GANGADHARAN, THEKKETHAZAHATH HOUSE,
   OLAVANNA, KOZHIKODE.

5. M.K. KANDANKUTTY, FORMER PANCHAYATH
   PRESIDENT, OLAVANNA GRAMA PANCHAYATH,
   P.O. OLAVANNA, KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: COMPLAINANT & STATE:

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1. SUB INSPECTOR OF POLICE,
   NALLALAM POLICE STATION, KOZHIKODE.

2. STATE OF KERALA REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

ADD.R3. VAYAPPURATH BALAGANGADHARAN VAIDYAR
S/O. KUNHAN ALIAS RAMANKUTTY VAIDYAR
ULATHUMKATTIL, P.O. VAIDYARANGADI, KOZHIKODE.

(ADDL.R3 IMPLEADED AS PER ORDER ON CRL.M.A. 1216/06 DT.5.6.2007.)

R1 & 2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB
ADDL. R3 BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 686 of 2003

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Dated this the 5th day of June, 2007

O R D E R

The petitioners are the five accused persons, who are arrayed in a crime registered alleging the offence punishable under Section 3(1)(v) and 3(2)(vii) of the SC/ST (Prevention of Atrocities) Act. The crime has been registered on the basis of Annex.A complaint filed before the police by the Addl. 3rd respondent/defacto complainant. As the crime is registered under Section 3 of the SC/ST ((Prevention of Atrocities) Act, the petitioners are unable to seek anticipatory bail in view of the bar under Section 18 of the Act. In these circumstances, left with no other alternative and facing the prospect of incarceration in prison pending investigation, the petitioners have come to this Court with this petition to quash the proceedings.

2. At the stage of final arguments, the learned counsel for the petitioners submits that the petitioners will be satisfied if the police is directed to conduct a proper and fair investigation expeditiously and this court makes observations protecting the rights of the petitioners to appear before the learned Magistrate and seek regular bail. The

petitioners apprehend that such application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. They further apprehend that the learned Magistrate may not consider the bail application for the reason that the offence is one triable exclusively by the Court of Sessions.

3. I find absolutely no merit in the apprehension aired by the petitioners. It is for the petitioners to appear before the learned Magistrate and seek bail in the regular and ordinary course. Every court has to consider such application for bail. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. The apprehension that the learned Magistrate may abdicate his powers and responsibilities to consider the application for bail is also found to be of no substance. This court has time and again re-iterated the correct position of law. The mere fact that the case is triable by a Court of Sessions is by itself not a reason for the learned Magistrate to abdicate his responsibility to consider an application for bail on merits. The decisions of this Court in **Ali** v. **State of Kerala** (2000 (2) KLT 280), **Shanu** v.

State of Kerala (2000 (3) KLT 452), **Krishnakumar** v. **State of Kerala** (2005 (1) KLD (Cri) 42) and **P.P. Kader** v. **State of Kerala** (2005 (1) KLD (Cri) 250) make the position crystal clear.

5. This Crl.M.C. is accordingly dismissed. But I may hasten to observe that if the petitioners appear before the learned Magistrate and seek for bail in the regular and ordinary course after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself, after adverting to the dictum in the decisions referred above.

(R. BASANT)
Judge

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